



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 15-364

Released: March 23, 2015

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING FILED BY BLACKBOARD, INC.

CG Docket No. 02-278

Comment Date: April 22, 2015

Reply Comment Date: May 7, 2015

With this Public Notice, we seek comment on a petition filed on February 24, 2015 by Blackboard, Inc. (Blackboard)¹ in which Blackboard seeks a declaratory ruling that “all automated informational messages sent by an educational organization via a recipient’s requested method of notification are calls made for ‘emergency purposes’ and thus outside the requirements of the Telephone Consumer Protection Act (TCPA).”² In the alternative, Blackboard petitions the Commission to declare that such an informational message sent to a wireless telephone number constitutes a call made with “prior express consent” when “the wireless telephone number has been provided to the caller as a means of providing information” to the recipient, “even if the wireless telephone number later is in use by another consumer.”³ Finally, Blackboard seeks a declaratory ruling that “called party” as used in the TCPA and the Commission’s rules refers to the “intended recipient” of the informational messages.⁴

Blackboard states that it offers, primarily to educational users, a mass notification platform, Blackboard Connect, that allows Blackboard’s customers to send notifications to parents, students, faculty, and others “regarding emergency weather closures, threat situations, event scheduling, or to provide other important education-related information.”⁵ According to Blackboard, these customers are

¹ See *Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, filed by Blackboard, Inc. on February 24, 2015 (*Petition*).

² *Id.* at 11-12. The TCPA is codified as 47 U.S.C. § 227. The Commission’s implementing rules are codified as 47 C.F.R. § 64.1200. In relevant part, the TCPA prohibits any person within the United States from making “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or artificial or prerecorded voice...to any telephone number assigned to a paging service, cellular telephone service...or any service for which the called party is charged for the call.” 47 U.S.C. § 227(b)(1).

³ *Petition* at 12.

⁴ *Id.* at 14.

⁵ *Id.* at 2-3.

responsible for obtaining prior express consent from called parties.⁶ Blackboard argues that the autodialed or prerecorded messages sent by its customers using Blackboard Connect comprise calls made for emergency purposes and are therefore permissible under the Commission's rules without the recipient's prior express consent.⁷ Blackboard argues that, in the alternative, the consent obtained by Blackboard's customers from the original subscriber to a wireless telephone number constitutes prior express consent when such a number has been reassigned by a wireless carrier or when, due to inadvertence or oversight, the called party is not the intended recipient.⁸ We seek comment on these and any other issues raised in the *Petition*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two

⁶ *Id.* at 3.

⁷ *Id.* at 1. Blackboard also argues that "all school-initiated informational messages should be considered sent for 'emergency purposes.'" *Petition* at 8.

⁸ *Petition* at 1-2.

⁹ 47 C.F.R. §§ 1.1200 *et seq.*

business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Robert Finley, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-7835 or Robert.Finley@fcc.gov.

-FCC-